IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

M.F.A.No.1025 of 2002

W.C.C.No.10/1997 OF THE COURT OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER), ERNAKULAM.

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APPELLANT: APPLICANT:-

K.M.JOSEPH, KALATHOOR HOUSE,
MANDAPATHU PARAMBU, THUTHIYOOR, KAKKANAD.

BY ADV. SRI.P.RAMAKRISHNAN
SMT.T.C.KRISHNA

RESPONDENT: OPPOSITE PARTY:-

TRACO CABLES CO. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, COCHIN-16

BY ADV. SRI.A.M.SHAFFIQUE.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

M.F.A.No.1025 of 2002

Dated, this the 9th day of April, 2007

JUDGMENT

A workman who sustained an employment injury which caused disablement is the appellant. The appellant was working in the respondent establishment. On 16.3.1992, he sustained electrical shock and sustained injuries. He filed a petition claiming compensation with a petition to condone the delay of 1012 days in preferring the claim petition. The Commissioner for Workmen's Compensation (Deputy Labour Commissioner) condoned the delay and found that the appellant sustained an employment injury. Appellant produced a certificate issued by the Medical Practitioner, in which it was shown that the appellant sustained 30% permanent partial disability, which will cause 60% loss of earning capacity. The doctor was examined also. The Commissioner accepted the medical certificate, but reduced the percentage of loss of earning capacity to 30%.

2. The learned counsel appearing for the appellant relying on a decision of this Court rendered in **New India Assurance Co. Ltd.** v. **Sreedharan** [1995 (1) KLT 275 (FB)] has argued that the Commissioner cannot unilaterally reduce loss of earning capacity fixed by a Medical Practitioner.

3. The respondent has not challenged the order passed by the Commissioner condoning the delay in preferring the claim petition. No request was made before the Commissioner to send the appellant for examination by a Medical Board also. Though the learned counsel for respondent made a fervent plea to direct the appellant to undergo an examination by the Medical Board, I do not think, any useful purpose will be served in directing to do so at this distant point of time. In **Sreedharan's case** (supra), a Full Bench of this Court had held that when the disability is fixed by a Medical Practitioner, the Commissioner cannot suo motu reduce it. It cannot be said that the Commissioner unilaterally reduced the disability. In fact, the respondent took steps and examined the doctor. It is only after considering the evidence of the doctor also the loss of earning capacity was reduced by the authority below. But, considering all

aspects of the matter, I am of the view that the earning capacity of the appellant should have been fixed by the Commissioner at 50%. So, the compensation awarded is recalculated as follows:

$$\frac{1000 \times 50 \times 50 \times 139.13}{100 \times 100} = \text{Rs.}34782.50$$

Rounded off to **Rs.34,783/-**.

The further compensation awarded will also be paid by the respondent with 6% interest.

The appeal is disposed of as indicated above.

K.Padmanabhan Nair
Judge

vku/-